

SHERIFF'S ENTRY OF SERVICE

Civil Action No. SUCV2022003016Superior Court ☒Magistrate Court ☐State Court ☐Probate Court ☐Juvenile Court ☐Date Filed 11/29/2022Georgia, Henry COUNTY

Attorney's Address

Yolanda Diaz

Plaintiff

P.O. Box 88550

VS.

Dunwoody, GA 30356Wal-Mart Stores East, LP

Name and Address of Party to Served

d/b/a WalmartThe Corporation Company (FL)

Defendant

106 Colony Park Drive, Suite 800-BCumming, GA 30040-2794

Garnishee

SHERIFF'S ENTRY OF SERVICE

PERSONAL

☐ I have this day served the defendant _____ personally with a copy of the within action and summons.

NOTORIOUS

I have this day served the defendant _____ by leaving a copy of the action and summons at his most notorious place abode in this County.

☐ Delivered same into hands of _____ described as follows: age, about _____ years; weight _____ pounds; height _____ feet and _____ inches, domiciled at the residence of defendant.

CORPORATION

Served the defendant The Corporation Company a corporation

☒ by leaving a copy of the within action and summons with Dayvon Jackson In charge of the office and place of doing business of said Corporation in this County.

TACK & MAIL

I have this day served the above styled affidavit and summons on the defendant(s) by posting a copy of the same to the door of the premises designated in said affidavit and on the same day of such posting by depositing a true copy of same in the United States Mail, First Class in an envelope properly addressed to the defendant(s) at the address shown in said summons, with adequate postage affixed thereon containing notice to the defendant(s) to answer said summons at the place stated in the summons.

NON EST

Diligent search made and defendant _____ not to be found in the jurisdiction of this Court.

This 14th day of Dec, 2022

DEPUTY

DEFENDANT'S COPY

General Civil and Domestic Relations Case Filing Information Form

FILED IN OFFICE
CLERK OF SUPERIOR COURT
HENRY COUNTY, GEORGIA

☒ Superior or ☐ State Court of Henry County

SUCV2022003016
PP

For Clerk Use Only

NOV 29, 2022 01:02 PM

Date Filed 11-29-2022Case Number SUCV2022003016

MM-DD-YYYY

Sabriya Hill, Clerk
Henry County, Georgia

Plaintiff(s)

Diaz, Yolanda

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Plaintiff's Attorney Eisenhower, Jessica

Defendant(s)

Wal-Mart Stores East, LP

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Last	First	Middle I.	Suffix	Prefix

Bar Number 936283Self-Represented ☐

Check one case type and, if applicable, one sub-type in one box.

General Civil Cases

- ☐ Automobile Tort
☐ Civil Appeal
☐ Contract
☐ Contempt/Modification/Other
☐ Post-Judgment
☐ Garnishment
☐ General Tort
☐ Habeas Corpus
☐ Injunction/Mandamus/Other Writ
☐ Landlord/Tenant
☐ Medical Malpractice Tort
☐ Product Liability Tort
☐ Real Property
☐ Restraining Petition
☒ Other General Civil

Domestic Relations Cases

- ☐ Adoption
☐ Contempt
☐ Non-payment of child support, medical support, or alimony
☐ Dissolution/Divorce/Separate Maintenance/Alimony
☐ Family Violence Petition
☐ Modification
☐ Custody/Parenting Time/Visitation
☐ Paternity/Legitimation
☐ Support – IV-D
☐ Support – Private (non-IV-D)
☐ Other Domestic Relations

- ☐ Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

Case Number

Case Number

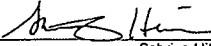
- ☐ I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

- ☐ Is a foreign language or sign-language interpreter needed in this case? If so, provide the language(s) required.

Spanish Language(s) Required

- ☐ Do you or your client need any disability accommodations? If so, please describe the accommodation request.

FILED IN OFFICE
CLERK OF SUPERIOR COURT
HENRY COUNTY, GEORGIA
SUCV2022003016
PP
NOV 29, 2022 01:02 PM


Sabriya Hill, Clerk
Henry County, Georgia

IN THE SUPERIOR COURT OF HENRY COUNTY
STATE OF GEORGIA

YOLANDA DIAZ,

Plaintiff,

v.

WAL-MART STORES EAST, LP d/b/a
WALMART,

Defendant.

CIVIL ACTION FILE NO.:

COMPLAINT FOR DAMAGES

COMES NOW, Yolanda Diaz, Plaintiff in the above-styled case, by and through counsel of record, and states all claims against Defendant.

I. JURISDICTION AND VENUE

1.

This action is brought pursuant to O.C.G.A. § 51-1-1 *et seq.* to redress the deprivation of rights secured by Georgia law. As such, this Court has jurisdiction pursuant to the Constitution of the State of Georgia.

2.

All of the actions, omissions, and events complained of herein took place in Henry County, State of Georgia. Defendant operates a business in Henry County, State of Georgia, accordingly venue properly lies in this Court pursuant to sect. II, para. VII, of the Georgia Constitution and O.C.G.A. § 14-2-510(4).

3.

At all times relevant to this Complaint, Defendant owned, managed, maintained, and/or operated the premises, located at 1400 Hudson Bridge Road, Stockbridge, GA

30261, which is a Walmart Supercenter, Store Number 3402 (the "Premises"). The general public was specifically invited to enter the Premises for the purpose of purchasing various goods therein.

II. PARTIES

4.

Plaintiff is a resident of Clayton County, Georgia and has been a resident of the State of Georgia for six months prior to the filing of this Complaint.

5.

Defendant Wal-Mart Stores East, LP is a foreign company that conducts business in Henry County, Georgia, and its registered agent is in Forsyth County. Defendant Wal-Mart Stores East, LP is subject to service via its registered agent The Corporation Company (FL), at 106 Colony Park Drive, Suite 800-B, Cumming, GA 30040-2794.

III. FACTUAL ALLEGATIONS

6.

Plaintiff realleges paragraphs 1 through 5, above as if they were set forth herein, verbatim.

7.

Plaintiff entered the Premises as a customer for the purpose of purchasing goods therein. Therefore, Plaintiff occupied the status of a business invitee upon entering said Premises.

8.

As Plaintiff was shopping inside the Premises, she sat on a swing that had been placed on display by the Defendant. suddenly and without warning, slipped and violently fell to the surface of the floor with great force, causing serious injury to her person.

9.

Suddenly, and without warning, the swing broke causing Plaintiff to fall to the floor with great force, causing serious injury to her person.

10.

Plaintiff was exercising due care for her own safety at the time that she fell, but unbeknownst to Plaintiff, prior to her fall, the swing on display had not been properly assembled.

11.

At the time of the event, there were no signs in place indicating that the swing was not intended for customer use, nor were there any other markers, signs, or warnings that the swing was currently a hazard.

IV. DAMAGES

12.

Plaintiff realleges and reaffirms the allegations contained in paragraphs 1 through 11 above, as if fully set forth herein, and states as follows:

13.

As a direct and proximate result of the negligence of the Defendant, Plaintiff incurred serious injuries, including, but not limited to, injuries to her head, neck, back, and left elbow.

14.

Plaintiff further shows that she has been required to receive medical treatment as a result of the injuries she sustained as a result of the fall and may be required to receive further medical attention and treatment in the future. Plaintiff shows that she has incurred medical expenses from the following providers:

- Henry County EMS in the amount of \$457.80

- Piedmont Henry Hospital in the amount of \$13,597.29
- Inphynet Primary Care Physicians in the amount of \$2,466.00
- Summit Radiology Services in the amount of \$288.00
- Barbour Orthopaedics & Sports Medicine in the amount of \$12,607.60
- Benchmark Physical Therapy in the amount of \$7,127.75
- Neuro Spine in the amount of \$11,200.00
- Hope Neurological in the amount of \$47,751.33
- Clear Imaging in the amount of \$2,250.00
- Safeway Psychological Services in the amount of \$240.00
- American Health Imaging in the amount of \$4,595.00

Plaintiff is entitled to recover from Defendant damages for past and future medical expenses, the exact amount to be proven at trial.

15.

As a direct and proximate result of the negligence of the Defendant, Plaintiff sustained serious injuries including pain and suffering injuries. Plaintiff's pain and suffering injuries include, but are not limited to, past and future, actual pain and suffering, mental anguish, the extent to which Plaintiff must limit activities, fear of extent of the injury, shock of impact, interference with normal living, interference with enjoyment of life, and impairment of bodily health and vigor.

16.

Plaintiff is further entitled to recover any and all other general damages proximately caused by Defendant's negligence.

17.

Plaintiff is also entitled to recover other necessary expenses against Defendant resulting from the negligence of the Defendant.

V. CLAIMS FOR RELIEF

Count I – Negligence

18.

Plaintiff realleges paragraphs 1 through 17, above as if they were set forth herein, verbatim.

19.

The existence of this negligently assembled swing on the sales floor of Defendant's Premises created a dangerous and hazardous condition.

20.

Defendant, by and through its employees, had actual knowledge of the existence of the dangerous and hazardous condition which caused Plaintiff to fall and resulted in serious bodily injuries. Even though Defendant possessed such knowledge, it, by and through its employees, took no steps or actions to either warn its customers and patrons of the existence of such a condition, or to timely remove or repair it.

21.

Defendant, by and through its employees, had constructive notice and knowledge of the presence of the dangerous and hazardous condition by virtue of attendant facts and circumstances which existed at the time of the occurrence complained of herein.

22.

Defendant was negligent in failing to maintain the premises in a safe manner including, but not limited to failing to inspect for and/or remove the dangerous condition which caused Plaintiff to fall.

23.

Defendant was negligent in failing to inspect the premises.

24.

Defendants failed to warn Plaintiff of the dangerous condition.

25.

Defendant has a non-delegable duty to keep its premises safe.

26.

Defendant failed to exercise ordinary care in keeping the premises and approaches safe pursuant to O.C.G.A. § 51-3-1.

27.

At all times material hereto, Plaintiff was unaware of the dangerous condition.

28.

Defendant was otherwise negligent.

29.

The sole and proximate cause of the accident was the negligence of Defendant, unmixed with any negligence on the part of Plaintiff.

VII. TRIAL BY JURY

30.

Plaintiff re-alleges and reaffirms the allegations contained in paragraphs 1 through 29 above, as if fully set forth herein, and states as follows:

31.

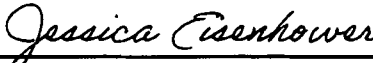
Plaintiff demands a trial by jury of twelve (12) persons for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays:

- A. For Summons and Process to issue according to law;
- B. For a Trial by Jury of Twelve (12) as to all issues so triable;
- C. For a Judgment against Defendant in such an amount as will compensate Plaintiff's losses for past and future medical bills;
- D. For a Judgment against Defendant in such an amount as will compensate Plaintiff's losses for past and future pain and suffering damages in an amount to be determined by the enlightened conscience of the jury;
- E. For reasonable attorney's fees, pre and post judgment interest, and all costs and expenses of this action; and
- F. For such other and additional relief as this Court deems just and proper.


Respectfully submitted this 29th day of November, 2022.

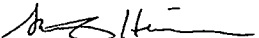


Jessica L. Eisenhower
Georgia Bar No. 936283
Attorney for Plaintiff
jessica@be-lawfirm.com

THE BARIONNETTE &
EISENHOWER LAW FIRM, LLC
P.O. Box 88550
Dunwoody, GA 30356
Tel: 404-491-9295
Fax: 678-305-0908

**SUPERIOR COURT OF HENRY COUNTY
STATE OF GEORGIA**

 **EFILED IN OFFICE**
CLERK OF SUPERIOR COURT
HENRY COUNTY, GEORGIA
SUCV2022003016
PP
NOV 29, 2022 01:02 PM



Sabriya Hill, Clerk
Henry County, Georgia

CIVIL ACTION NUMBER SUCV2022003016

Diaz, Yolanda

PLAINTIFF

VS.

Wal-Mart Stores East, LP, DBA Walmart

DEFENDANT

SUMMONS

TO: WAL-MART STORES EAST, LP

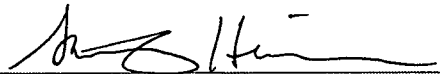
You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

**Jessica Eisenhower
The Law Office of J.L. Eisenhower, LLC
P.O. Box 88550
Dunwoody, Georgia 30356**

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 29th day of November, 2022.

Clerk of Superior Court



Sabriya Hill, Clerk
Henry County, Georgia

FILED IN OFFICE
CLERK OF SUPERIOR COURT
HENRY COUNTY, GEORGIA
SUCV2022003016
PP
JAN 05, 2023 02:40 PM

TELEPHONE (770) 953-1710

WALDON ADELMAN CASTILLA
HIESTAND & PROUT
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
900 CIRCLE 75 PARKWAY
SUITE 1040
ATLANTA, GEORGIA 30339

FACSIMILE (770) 933-9162

DIRECT DIAL (770) 933-7026
E-MAIL DCPROUT@WACHP.COM

Sabriya Hill, Clerk
Henry County, Georgia

January 5, 2023

TO: All Clerks of Court, All Judges, and Counsel of Record

RE: Leave of Absence

NOTICE OF REQUEST FOR LEAVE OF ABSENCE

COMES NOW **Casey Brown** and respectfully notifies all Judges before whom he has cases pending, all affected clerks of court, and all opposing counsel that he will be on leave pursuant to Georgia Uniform Court Rule 16.

1. The periods of leave during which Applicant will be away from the practice of law are as follows:
 - March 1 through March 14, 2023 - Personal vacation.
2. All affected judges and opposing counsel shall have ten (10) days from the date of this Notice to object to it. If no objections are filed, the leave shall be granted.

This 5th day of January, 2023.

WALDON ADELMAN CASTILLA
HIESTAND & PROUT

Casey Brown

Casey Brown
Georgia Bar No. 757384

900 Circle 75 Parkway
Suite 1040
Atlanta, Georgia 30339
(770) 953-1710
cbriwb@wachp.com

CERTIFICATE OF SERVICE

This is to certify that I have this day filed and served the foregoing Notice of Leave of Absence upon all judges, clerks, and opposing counsel listed on the attached Exhibit “A,” by using an O.C.G.A. § 15-6-11 electronic filing service provider which will automatically send e-mail notification of such filing.

This 5th day of January, 2023.

WALDON ADELMAN CASTILLA
HIESTAND & PROUT

Casey Brown

Casey Brown
Georgia Bar No. 757384

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Suite 1040
Atlanta, Georgia 30339
(770) 953-1710
cbrown@wachp.com

CASE NAME/NUMBER	JUDGE/COURT	OPPOSING COUNSEL
<u>Yolanda Diaz v. Wal-Mart Stores East, LP D/B/A Walmart</u> Civil Action File Number: SUCV2022003016	Judge Superior Court of Henry County	Jessica Eisenhower, Esq. Georgia Bar No. 936283 The Barionnette & Eisenhower Law Firm, LLC 3098 Breckinridge Blvd. Duluth, GA 30096 (404) 491-9295 Fax (404) 738-1527 Jessica@BE-Lawfirm.com

Exhibit A

IN THE SUPERIOR COURT OF HENRY COUNTY
STATE OF GEORGIA

YOLANDA DIAZ,)	
)	
Plaintiff,)	
)	Civil Action File
vs.)	No. SUCV2022003016
)	
WAL-MART STORES EAST, LP)	
D/B/A WALMART)	
Defendant.)	

**ANSWER AND JURY DEMAND OF DEFENDANT WAL-MART STORES
EAST, LP**

Defendant Wal-Mart Stores East, LP, by and through counsel, answers
plaintiff's Complaint as follows:

FIRST DEFENSE

Plaintiff's failure to specifically state items of special damages as required
by Georgia law bars their recovery.

SECOND DEFENSE

Plaintiff has failed to state a claim for active negligence based on the facts
alleged in her Complaint.

THIRD DEFENSE

Plaintiff's claims are barred by her own contributory negligence.

FOURTH DEFENSE

Plaintiff's claims are barred by her voluntary assumption of risk.

FIFTH DEFENSE

Plaintiff fails to state a claim upon which relief can be granted for attorney's fees.

SIXTH DEFENSE

Defendant did not breach any duty it may have owed to the plaintiff and was not otherwise negligent.

SEVENTH DEFENSE

Responding to the specific allegations of the numbered paragraphs of plaintiff's Complaint, defendant Wal-Mart Stores East, LP answers:

1.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.

2.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2.

3.

Defendant admits that it managed, maintained, and/or operated the premises located at 1400 Hudson Bridge Road in Stockbridge Georgia, 30261, which is a Walmart Supercenter Store Number 3402. Defendant denies the allegations of paragraph 3 as pled.

4.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4.

5.

Defendant admits that it conducts business in Henry County, Georgia and its registered agent is in Forsyth County. Defendant admits that it is subject to service via its registered agent at the address listed in the Complaint. Defendant denies the remaining allegations of paragraph 5 to the extent it alleges that defendant is a corporation rather than a limited partnership.

6.

Defendant incorporates and re-alleges its responses to paragraphs 1-6 inclusive .

7.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7.

8.

Defendant admits that there was swing located within the Premises. Defendant denies the remaining allegations of paragraph 8.

9.

Defendant denies the allegations of paragraph 9.

10.

Defendant denies the allegations of paragraph 10.

11.

Defendant admits there were no signs in place. Defendant denies the remaining allegations of paragraph 11 insofar as there was no need for warning signs given the lack of a hazard.

12.

Defendant incorporates and re-alleges its responses to paragraphs 1-11 inclusive

13.

Defendant denies the allegations of paragraph 13.

14.

Defendant denies the allegations of paragraph 14.

15.

Defendant denies the allegations of paragraph 15.

16.

Defendant denies the allegations of paragraph 16.

17.

Defendant denies the allegations of paragraph 17.

18.

Defendant incorporates and re-alleges its responses to paragraphs 1-17 inclusive.

19.

Defendant denies the allegations of paragraph 19 as pled.

20.

Defendant denies the allegations of paragraph 20.

21.

Defendant denies the allegations of paragraph 21.

22.

Defendant denies the allegations of paragraph 22.

23.

Defendant denies the allegations of paragraph 23.

24.

Defendant denies the allegations of paragraph 24.

25.

Defendant denies the allegations of paragraph 25 as pled.

26.

Defendant denies the allegations of paragraph 26.

27.

Defendant denies the allegations of paragraph 27.

28.

Defendant denies the allegations of paragraph 28.

29.

Defendant denies the allegations of paragraph 29.

30.

Defendant incorporates and re-alleges its responses to paragraphs 1-29 inclusive.

31.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31.

32.

Any allegation, language or paragraph of plaintiff's Complaint not heretofore responded to is specifically denied by defendant Wal-Mart Stores East, LP.

WHEREFORE having answered, defendant Wal-Mart Stores East, LP prays that it be discharged, with its costs, that it receives a trial by a jury of twelve (12) persons, and that it receive all further relief available under the law.

This 13th day of January, 2023.

WALDON ADELMAN CASTILLA
HIESTAND & PROUT

/s/ Casey J. Brown
Jonathan M. Adelman
Georgia Bar No. 005128
Casey J. Brown
Georgia Bar No. 757384
Attorneys for Wal-Mart Stores East,
LP

900 Circle 75 Parkway
Suite 1040
Atlanta, Georgia 30339
(770) 953-1710
jadelman@wachp.com
cbrown@wachp.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this PLEADING with the Clerk of the Court using an O.C.G.A. § 15-6-11 electronic filing service provider which will automatically send e-mail notification of such filing to the following attorney(s) of record:

Jessica L. Eisenhower
The Law Office of J.L. Eisenhower, LLC
P.O. Box 88550
Dunwoody, Georgia 30356

This 13th day of January, 2023.

WALDON ADELMAN CASTILLA
HIESTAND & PROUT

/s/ Casey J. Brown
Jonathan M. Adelman
Georgia Bar No. 005128
Casey J. Brown
Georgia Bar No. 757384
Attorneys for Wal-Mart Stores East,
LP

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